IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF IOWA CENTRAL DIVISION

JEANNE SACKETT,

Plaintiff.

VS.

DIANE HANSEN, in Her Official Capacity as Section 8 Case Manager of the City of Des Moines Municipal Housing Agency, and CITY OF DES MOINES MUNICIPAL HOUSING AGENCY,

Defendants.

No. 4:04-cv-00682-JEG

ORDER ON DEFENDANTS'
MOTION TO DISMISS AND
REMAND TO STATE COURT

This matter comes before the Court on Defendants' Motion to Dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6). Plaintiff Jeanne Sackett is represented by Pamela Vandel; Defendants Dianne Hansen and the City of Des Moines Municipal Housing Agency are represented by Michael Kelly. The parties have not requested a hearing, nor does the Court deem one is necessary. The matter is fully briefed and ready for disposition.

FACTS AND PROCEDURAL HISTORY

In May 1999, Jeanne Sackett ("Sackett") began receiving rental assistance through a "Section 8" housing program administered by Des Moines Municipal

¹ "Section 8" refers to Chapter 8 - Low Income Housing - of Title 42 U.S.C. § 1437f.

Housing Agency ("DMMHA"). DMMHA is a public housing authority that exercises control over certain federal housing subsidies, vouchers, and rental assistance programs.

On July 27, 2004, Sackett received notice from Diane Hansen, the Section 8 Case Manager for DMMHA, that her dwelling unit had been randomly selected for a quality control inspection. DMMHA made three attempts to perform quality control re-inspections. In each attempt, Sackett reportedly failed to cooperate. On August 18, 2004, Sackett was informed that her Section 8 housing assistance program would terminate effective September 30, 2004, for lack of cooperation with the attempted inspections and a lease violation.² An informal hearing was held pursuant to 24 C.F.R. § 982.555(a)(1)(v). On October 18, 2004, Sackett received notice from DMMHA that the hearing officer upheld DMMHA's termination of her rental assistance.

Sackett filed a Writ of Certiorari in the Iowa District Court for Polk County on November 18, 2004. In response to Sackett's petition, Defendants filed a Notice of Removal, asserting federal question jurisdiction. Defendants then filed the present motion to dismiss pursuant to Federal Rule of Civil Procedure 12(b)(6), asserting Sackett failed to state a claim upon which relief may be granted.

² Sackett's son, Christopher Breuklander, was living with her in the public housing unit. Sackett submitted a request to add Breukland as a resident, but her request was denied. DMMHA advised Sackett that failure to remove Breuklander from the residence constituted a deficiency in her lease agreement. Sackett had Breuklander leave, thereby curing the deficiency.

In resistance to Defendants' motion to dismiss, Sackett argues her claim as filed in Polk County District Court was a request for review of the public agency's decision to terminate her benefits pursuant to Iowa Rule of Civil Procedure 1.1401 and not a claim for relief under the ADA. Sackett points out that Defendants' position is inconsistent since they asserted in the notice of removal an alleged ADA claim as the basis for removing this case to federal court, but then in moving to dismiss, Defendants argue Plaintiff has not stated a claim under the ADA. Accordingly, in resistance to the motion to dismiss, Sackett argues that if the Complaint fails to state a claim under the ADA, this Court lacks original jurisdiction and should remand the case to the state court.

The proper procedural vehicle to challenge removal is by filing a motion to remand pursuant to 28 U.S.C. § 1447(c). Plaintiff has not followed that procedure. However, if at any time following removal the Court finds it lacks subject matter jurisdiction, the Court is required to raise the issue sua sponte and remand the case. See, e.g., Thomas v. Basham, 931 F.2d 521, 522-23 (8th Cir. 1991).

A motion to remand the case on the basis of any defect other than lack of subject matter jurisdiction must be made within 30 days after the filing of the notice of removal under section 1446(a). If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded.

28 U.S.C. § 1447(c). For the reasons advanced below, the Court finds subject matter jurisdiction is lacking and must resolve the matter on that basis.

STANDARD FOR REMAND

"Federal district courts may exercise removal jurisdiction only where they would have had original jurisdiction had the suit initially been filed in federal court."

Krispin v. May Dep't Stores Co., 218 F.3d 919, 922 (8th Cir. 2000) (citing 28 U.S.C. § 1441(b)). "Removal based on federal question jurisdiction, as in this case, is generally governed by the 'well-pleaded complaint' rule, which provides that federal jurisdiction exists only where a federal question is presented on the face of the plaintiff's properly pleaded complaint." Krispin, 218 F.3d at 922. "If at any time before final judgment it appears that the district court lacks subject matter jurisdiction, the case shall be remanded." 28 U.S.C. § 1447(c).

DISCUSSION

In their notice of removal, Defendants allege removal jurisdiction pursuant to 28 U.S.C. § 1441, asserting the following:

Plaintiff's Petition alleges that Defendants exercise control over certain "Section 8" federal housing subsidies, vouchers, and rental assistance programs and that Defendants illegally terminated her Section 8 housing assistance subsidy. Public Housing Authority and tenant rights, responsibilities, inspections, grievance, termination, hearing and appeals pertaining to Section 8 are set forth in 24 C.F.R. 982. The Petition also alleges that defendants failed to make reasonable accommodations for plaintiff's handicap, which appears to challenge plaintiff's termination from the Section 8 program under the American with Disabilities Act, Title 42 U.S.C. § 12101 et. seq. This case is removed pursuant to 28 U.S.C. Section 1441(a) and (c).

The Court construes from this notice two possible theories of removal jurisdiction:

(1) DMMHA being a federally subsidized program; and/or (2) Sackett alleging a claim

under the American with Disabilities Act ("ADA"). Regardless of which basis the Defendants intended to set forth, neither forms the basis of removal jurisdiction in the present case.

Removal jurisdiction based on DMMHA status as a federally subsidized program fails because DMMHA is a state agency making its decisions beyond the purview of the federal courts. As the Eighth Circuit has recently pointed out,

The APA does not grant federal courts jurisdiction to review actions of state or municipal agencies. The Des Moines Housing Authority is a state agency created pursuant to the authority granted in Iowa Code Chapter 403A. The agency provides federally subsidized public housing to low income families, but it is not a federal agency whose actions are governed by the APA. . . .

We find nothing in these provisions that either grants federal agency status to the state agency or grants federal courts the jurisdiction to review the actions of local public housing agencies.

<u>Hunter v. Underwood</u>, 362 F.3d 468, 477 (8th Cir. 2004). Therefore, the Court does not have jurisdiction to review the DMMHA decision to terminate Sackett's housing subsidy.³

Whether Iowa Rule 1.1401 does or does not provide a civil cause of action is not currently pertinent because this Court lacks jurisdiction to review the decision of a

³ Defendants argue that a Writ of Certiorari pursuant to Iowa Rule 1.1401 does not provide a civil cause of action in the present case because Sackett is requesting a review of her denial of benefits and not challenging illegal agency action. <u>Kirkman v. Disability Appeals Comm. of the Mun. Fire & Police Ret. Bd.</u>, No. 01-1963, 2002 WL 31757508, at *1 (Iowa Ct. App. Dec. 11, 2002) (unpublished) ("The party receiving an adverse decision from the Board may seek judicial review of the agency's decision by filing a petition for writ of certiorari. For the writ of certiorari to be sustained, the Plaintiff must show the Board acted illegally by failing to act in accordance with a statute, or that its decision was not supported by substantial evidence.").

Removal jurisdiction based on an alleged claim under the ADA similarly fails.

In her Writ of Certiorari, Sackett states,

The Plaintiff is physically and mentally handicapped. According to her doctor, Kurt A. Smith, D.O., she "continues to demonstrate problems with ambulation and thinking skills, including memory deficits." The Defendant was aware of the Plaintiff's handicap and failed to make reasonable accommodations.

While these statements draw attention to the fact that Sackett *is* handicapped, she does not specifically allege that Defendants violated provisions of the ADA nor does she request relief thereunder. In resistance to the motion to dismiss, Sackett rejects the assertion that she is making a claim under the ADA, arguing her initial petition is merely a request for the review of the DMMHA denial of benefits.

Removal based on federal question jurisdiction is governed by the 'well-pleaded complaint' rule. Krispin, 218 F.3d at 922. Whether or not Sackett intended to state a claim under the ADA is unimportant; the fact that there is no legally supportable claim on the face of the complaint is dispositive in the present case. "The presence or absence of federal-question jurisdiction is governed by the 'well-pleaded complaint rule,' which provides that federal jurisdiction exists only when a federal question is presented on the face of the plaintiff's properly pleaded complaint." Caterpillar Inc. v. Williams, 482 U.S. 386, 392 (1987). The Court finds no federal question was

state agency. <u>Hunter</u>, 362 F.3d at 477. That is a task left to another tribunal with proper jurisdiction who will apply the appropriate standard of review.

pleaded at the time of removal, and the case must be remanded for lack of subject matter jurisdiction.

CONCLUSION

Whether Defendants based removal on the theory that DMMHA is a federally subsidized program or on the theory that Sackett was stating a claim under the ADA, the Court finds the Complaint fails to state a federal question claim under either theory; therefore, removal was improper. For the foregoing reasons, the Court must **remand** this case to the Polk County District Court for lack of subject matter jurisdiction under 28 U.S.C. § 1447(c). Accordingly, Defendants' Motion to Dismiss (Clerk's No. 4) must be **denied** as moot.

IT IS SO ORDERED.

Dated this 10th day of February, 2005.

ZIAMES E. GRITZNER, JUDGEZ UNITED STATES DISTRICT (DOURT